September 10, 1991

MEMORANDUM

TO: Jeremy T. Harrison, Dean
William S. Richardson School of Law

FROM: Hugh R. Jones, Staff Attorney

RE: William S. Richardson School of Law Accreditation Reports

This is in reply to your request for an advisory opinion concerning the public's right to inspect and copy "self-study" and site evaluation reports prepared in connection with the 1989 "sabbatical" evaluation and inspection of the William S. Richardson School of Law by the American Bar Association ("ABA") and the Association of American Law Schools ("AALS").

ISSUE PRESENTED

Whether, under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA"), the 1989 "self-study," sabbatical site evaluation report, and action letters, prepared in connection with the 1989 accreditation review of the William S. Richardson School of Law by the ABA and the AALS, must be made available for public inspection and copying.

BRIEF ANSWER

The UIPA provides that all government records must be made available for public inspection and copying, unless one of the statutory exceptions to public access set forth at section 92F-13, Hawaii Revised Statutes, authorizes an agency to withhold access to those records. See Haw. Rev. Stat. . 92F-11(b) (Supp. 1990).

Under the UIPA, the term "government record" means information maintained by an agency in some physical form. See Haw. Rev. Stat. § 92F-3 (Supp. 1990). As with the federal Freedom of Information Act, 5 U.S.C. § 552 (1990), and other state freedom of information statutes, the UIPA's statutory exceptions to public access must be narrowly construed, and it is the agency's burden to establish, by other than conclusory and generalized assertions, that a government record falls within one of the statutory exceptions to public access.

In several Office of Information Practices ("OIP") opinion letters, we opined that section 92F-13(3), Hawaii Revised Statutes, permits, but does not compel, agencies to deny access to certain "intra-agency" and "inter-agency" memoranda which are subject to the common law "deliberative process privilege." The deliberative process privilege of section 92F-13(3), Hawaii Revised Statutes, exists to protect the quality of the decisionmaking of State and county agencies, by encouraging agency subordinates to express candid opinions and recommendations on questions of agency policy or law. Were the opinions and recommendations of agency subordinates on issues of agency policy or law routinely disclosed, agency personnel would cease to provide candid and frank advice to agency decisionmakers, and the quality of agency decisionmaking would consequently suffer.

Based upon our review of the University of Hawaii's William S. Richardson School of Law's ("Law School") 1989 self-study, we are constrained to conclude, as we did in OIP Opinion Letter No. 90-11 which examined very similar academic self-study reports, that those portions of the Law School's self-study which express the candid evaluations, opinions, or recommendations of Law School personnel concerning the Law School's operations, are subject to this privilege. However, this privilege does not apply to purely factual and reasonably segregable information contained in an otherwise deliberative document. Therefore, all purely factual information set forth in the Law School's 1989 self-study must be segregated and made available for public inspection.

With regard to the 1989 joint site evaluation report prepared by the ABA and AALS accreditation inspection team, neither the ABA nor the AALS constitutes an "agency" within the meaning of section 92F-3, Hawaii Revised Statutes. Further, the joint site evaluation report was prepared for the principal purpose of an accreditation decision by these non-governmental entities. Despite several requests by the OIP, the ABA has failed to make any specific and nonconclusory demonstration of

how disclosure of the 1989 site evaluation report would be injurious to the quality of the Law School's decisionmaking. Moreover, this government record is not among the categories of government records set forth in the legislative history of section 92F-13(3), Hawaii Revised Statutes, as examples of government records, the disclosure of which might result in the frustration of a legitimate government function.

In view of these facts, and narrowly construing section 92F-13(3), Hawaii Revised Statutes, as we must, we conclude that: 1) the 1989 joint site evaluation report prepared by the ABA and AALS is not an "intra-agency" or "inter-agency" memorandum which must remain confidential to avoid the frustration of the legitimate government function of agency decisionmaking; and 2) except for those portions of the 1989 joint site evaluation report which evaluate the Law School's self-study, and reveal the opinions, recommendations, or evaluations of the self-study's authors, there is an inadequate basis for us to conclude that the disclosure of the joint site evaluation report would, in some other way, result in the frustration of a legitimate government function within the meaning of section 92F-13(3), Hawaii Revised Statutes.

On the contrary, however, we conclude that isolated portions of the Law School's self-study and the joint site evaluation report are protected from disclosure by the UIPA's exception for government records which, if disclosed, "would constitute a clearly unwarranted invasion of personal privacy." Haw. Rev. Stat. . 92F-13(1) (Supp. 1990). In particular, we conclude that those portions of both reports which reveal the exact salaries of certain Law School personnel, their home addresses, home telephone numbers, birthdates, or marital statuses, should not be disclosed to the public under the UIPA.

Finally, we conclude that ABA correspondence dated November 21, 1989, and AALS correspondence dated November 30, 1989, both of which report the official accreditation actions of each accrediting institution based upon the site inspection of the Law School, are not protected from disclosure under the UIPA. Rather, in our opinion, the disclosure of these government records would promote the legislatively declared purposes and polices underlying the UIPA, to promote governmental accountability, shed light upon the operations and conduct of government agencies, and open up government processes to public scrutiny.

FACTS

Pursuant to Rule 1(c) of the Rules of the Supreme Court of Hawaii, no person may be admitted to the Hawaii State Bar who is not a graduate of a law school approved by the Council of the American Bar Association on Legal Education.[1] The Law School, which admitted its first class on September 4, 1973, was granted "fully approved" status from the ABA's Council on Legal Education ("Council") on August 27, 1982.

Following full approval by the Council, a site inspection of that school is conducted in the third year after the granting of full approval. Thereafter, each fully approved law school is subject to a "sabbatical" site evaluation every seven years, unless the Council decides that circumstances warrant a special site evaluation. See Rule 26 of of the Rules of Procedure for the Approval of Law Schools by the ABA ("ABA Rules").

These inspections are conducted by an inspection team which is generally comprised of legal educators, a law librarian, a practicing lawyer or member of the judiciary, and sometimes a non-lawyer, university administrator, or professor. Before their visit, the inspection team members review a detailed "self-study" report prepared by representatives of the law school under review.

The inspection itself typically takes three and one-half days and includes an evaluation of the school's financial data, physical plant, and curriculum, as well as the administrative and faculty components of the institution. Conferences with faculty members and students are conducted by the inspection team, and visits are made to classes. Following the inspection, a site evaluation report is prepared by the inspection team. According to rule 27 of the ABA Rules, the evaluation report does not determine compliance or noncompliance with ABA standards, but reports facts and observations that will enable the Council's Accreditation Committee ("Committee") and the Council to determine whether the school has complied with ABA standards. After the ABA's Consultant on Legal

[1]Rule 1(c) of the Rules of the Supreme Court of Hawaii does set forth two limited exceptions to this Rule.

Education ("Consultant")[2] has confirmed that the evaluation report conforms to ABA format requirements, a copy is submitted to the dean of the law school to provide an opportunity to make factual corrections and comments.

Following receipt of the school's response, the Committee reviews the site evaluation report, the school's self-study, and other written material provided by the school. After reviewing this material, the Committee issues an "action letter" notifying the dean of the school of the Committee's final action. If the Committee's review results in a finding that the law school has not complied with or adhered to the ABA's Standards for Approval of Law Schools, the school's fully approved status may be withdrawn, or conditions may be placed upon the school's status as fully approved.

Rule 36(a) of the ABA Rules provides that reports of site evaluations may be disclosed to the school's president, dean, faculty, university administration and governing board, but "[t]he report may not be publicly distributed." This rule also provides that the Consultant "may release to the public the status of the school, with an explanation of the Association procedure for consideration of an application." Moreover, with respect to the Council's "action letter," rule 36(b) of the ABA Rules provides:

> The school is free to make use of the recommendations and decisions as contained in the Consultant's action letter addressed to the president and dean. However, any release must be a full release, and not selected excerpts.

Another organization, the AALS, also conducts accreditation inspections of law schools which have been granted membership in that organization. Graduation from an AALS member law school is not a prerequisite to being admitted to practice in any jurisdiction. However, membership in the AALS is often of critical importance to a law school's prestige, national reputation for excellence, and student recruiting efforts. For example, of the 175 ABA-approved law schools, 154 were AALS members in 1988. To be eligible for

[2]The ABA's Consultant carries out the administrative duties of the Council.

membership in the AALS, a law school must have offered five years of instruction and have graduated its third class of law students.

After initial membership in the AALS is granted, regular site inspections of member schools are conducted in conjunction with those conducted by the ABA's Council. In fact, such inspections are joint inspections, and the resulting site evaluation report is a joint report to the ABA and the AALS. Whereas the ABA's final action is set forth in an "action letter," the final action of the AALS's Executive Committee is expressed by way of a letter called a "resolution" or "minute." Insofar as the accreditation standards of the ABA and the AALS differ, the ABA's "action letter" and the AALS's "resolution" may make different findings and reach different conclusions.

Like the ABA, the AALS also has regulations regarding the disclosure of its site evaluation reports. Section 5.6 of the AALS regulations provides in pertinent part:

> a.The site evaluation report on a member or applicant law school made on behalf of the Association, whether or not it is made on behalf of the American Bar Association also, shall be furnished to the dean of the school and the President of the institution. They shall be informed that the report is not for publication . . . . [Emphasis added.]

However, section 5.4(b) of the AALS regulations, entitled "Classification of Association Documents," provides in relevant part:

> If a document is a report on a site evaluation of a member or applicant school or relates to the evaluation of a member or applicant school's compliance with the requirements for membership, it shall be classified confidential subject to the special provisions of [section] 5.6 . . . . However, if a law applicable to a state law school makes the site evaluation report on or other documents relating to the school a public document, it is a public document. [Emphasis added.]

Ka Leo O Hawaii, the University of Hawaii at Manoa campus newspaper, has requested to inspect and copy the Law School's

1989 self-study and "accreditation reports." A similar request was made by Jahan Byrne, who at the time was a senator with the Associated Students of the University of Hawaii. In response to these inquiries, the Law School requested an advisory opinion from the OIP concerning whether the requested government records are subject to inspection and copying under the UIPA.

In connection with our preparation of this opinion, the OIP contacted the ABA's Consultant on Legal Education, James P. White. In a letter to the OIP dated January 31, 1991, Mr. White stated the ABA's opposition to the disclosure of its site evaluation accreditation reports, stating:

> It is our view that the accreditation of law schools by the American Bar Association is conducted on behalf of the various state bar admitting authorities, the highest courts of the several states and that the confidentiality of the site evaluation report is necessary to avoid the compromise of the necessary and legitimate function of the law school accreditation performed by the American Bar Association on behalf of the highest courts of each state.

DISCUSSION

I. GENERAL UIPA DISCLOSURE PRINCIPLES

The UIPA, the State's new open records law, generally provides that "[a]ll government records are available for public inspection unless access is restricted or closed by law." Haw. Rev. Stat. § 92F-11(a) (Supp. 1990). Thus, "[e]xcept as provided in section 92F-13, each agency upon request by any person shall make government records available for inspection and copying during regular business hours." Haw. Rev. Stat. § 92F-11(b) (Supp. 1990). There is no genuine issue that the UIPA governs public access to the pertinent accreditation reports, because they comprise "information maintained by an agency" in a physical form and, therefore, constitute "government records." See Haw. Rev. Stat. § 92F-3 (Supp. 1990).

Additionally, as with the federal Freedom of Information Act, 5 U.S.C. § 552 (1990) ("FOIA"), and the open records laws of other states, the UIPA's statutory exceptions to required

agency disclosure must be construed narrowly, and any doubts or ambiguities in their application resolved in favor of disclosure. See Department of the Air Force v. Rose, 425 U.S. 352, 361-63 (1976); Seminole County v. Wood, 512 So. 2d 1000 (Fla. Dist. Ct. App. 1987), pet. for reh. denied, 520 So. 2d 586 (Fla. 1988); Hechler v. Casey, 333 S.E.2d 799 (W. Va. 1985); Laborers Intern. Union of North America Local No. 374 v. City of Aberdeen, 642 P.2d 418 (Wash. App. 1982). Moreover, as with similar federal and state freedom of information statutes, under the UIPA, the burden of establishing that a government record is protected by one of the exceptions set forth at section 92F-13, Hawaii Revised Statutes, is upon the agency. See, e.g., Haw. Rev. Stat. § 92F-15 (Supp. 1990).

Despite extensive research, we could find no legal authority or Attorney General opinion which has considered the subject of public access to accreditation reports prepared by the ABA or AALS under a state freedom of information act. Nor has the ABA, the AALS, or the Law School provided the OIP with any relevant authority applying a public records law to accreditation reports prepared by the ABA or the AALS. Thus, we must resolve the issue presented based upon general UIPA principles, by examining whether one or more of the exceptions set forth at section 92F-13, Hawaii Revised Statutes, permits the Law School to withhold access to the pertinent government records.

II. EFFECT OF ABA RULE PROHIBITING DISCLOSURE OF SITE EVALUATION REPORT

As stated above, although the AALS regulations permit the disclosure of its site evaluation report on a member law school when required by a state open records law, section 26(a) of the ABA Rules prohibits the public distribution of its site evaluation reports. We now examine the effect, if any, that this ABA rule has upon public access to such a report under the UIPA.

Like other open records laws, under the UIPA virtually every government record maintained by an agency must be made available for public inspection unless it is specifically excepted from disclosure, or specifically excluded from the UIPA's coverage in the first place. NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 136 (1975). Just like the FOIA, the UIPA's statutory exceptions ordinarily provide the only basis for nondisclosure. See Haw. Rev. Stat. § 92F-11(b) (Supp. 1990);

Department of the Air Force v. Rose, 425 U.S. 352 (1976) ("[t]hese exemptions are specifically made exclusive").

Based upon the foregoing principle, it is also well established that neither agency regulations nor guidelines may designate as "confidential," government records that are not subject to a statutory exception under federal and state open records laws. See, e.g., Marzen v. U.S. Department of Health and Human Services, 632 F. Supp. 785, 794 (N.D. Ill. 1986); Church of Scientology v. Dep't. of Justice, 410 F.Supp. 1297, 1301 n. 7 (CD Cal. 1976), affirmed, 612 F.2d 417 (9th Cir. 1979); Cashel v. Smith, 324 N.W.2d 336, 338 (Minn. App. 1982). This principle also prohibits an agency, by contract, from promising to make public records "confidential." See OIP Op. Ltr. Nos. 89-10 (Dec. 12, 1989), 90-2 (Jan. 18, 1990), 90-39 (Dec. 31, 1990).

Because the exceptions set forth at section 92F-13, Hawaii Revised Statutes, are the exclusive bases upon which a governmental agency may deny access to government records, we conclude that rule 26(c) of the ABA Rules which prohibits the disclosure of its site evaluation reports cannot, in and of itself, dictate the answer to the question presented. Indeed, section 5.6 of the AALS Rules recognizes that the disclosure of a site evaluation report concerning a state school is ultimately controlled by state records laws, not the AALS or its member schools. Therefore, protection of the site evaluation report, if at all, must originate with one of the UIPA's statutory exceptions to access, not from the policies of a non-governmental agency. We now turn to a consideration of those exceptions.

III. FRUSTRATION OF LEGITIMATE GOVERNMENT FUNCTION

Section 92F-13(3), Hawaii Revised Statutes, provides that agencies are not required by the UIPA to disclose "[g]overnment records, that by their nature, must be confidential in order for the government to avoid the frustration of a legitimate government function."

Although upon initial examination this statutory exception appears somewhat imprecise, the legislative history of section 92F-13(3), Hawaii Revised Statutes, provides clarity through examples of government records that need not be disclosed if doing so would result in the frustration of a legitimate government function:

(b) Frustration of legitimate government function. The following are examples of records which need not be disclosed, if disclosure would frustrate a legitimate government function.

(1) Records or information compiled for law enforcement purposes;

(2) Materials used to administer an examination which, if disclosed, would compromise the validity, fairness or objectivity of the examination;

(3) Information which, if disclosed, would raise the cost of government procurements or give a manifestly unfair advantage to any person proposing to enter into a contract or agreement with an agency, including information pertaining to collective bargaining;

(4) Information identifying or pertaining to real property under consideration for future public acquisition, unless otherwise available under State law;

(5) Administrative or technical information, including software, operating protocols and employee manuals, which, if disclosed, would jeopardize the security of a record keeping system;

(6) Proprietary information, such as research methods, records and data, computer programs and software and other types of information manufactured or marketed by persons under exclusive legal right, owned by an agency or entrusted to it;

(7) Trade secrets or confidential commercial and financial information;

(8) Library, archival, or museum material contributed by private persons to the extent of any lawful limitation imposed by the contributor; and

(9) Information that is expressly made nondisclosable or confidential under Federal or State law or protected by judicial rule.

S. Stand. Comm. Rep. No. 2580, 14th Leg., 1988 Reg. Sess. Haw. S. J. 1093, 1095 (1988).

Although the above examples do not purport to be an exhaustive listing, in accordance with the general UIPA principles discussed above, we are constrained to construe the UIPA's "frustration of legitimate government function" exception narrowly, and extend its application only upon a clear showing that the disclosure of a particular government record would frustrate or impair a legitimate government function. A contrary conclusion would permit agencies to forge a "Northwest Passage" through the UIPA, and defeat the expressed public policy of this State that "the formation and conduct of public policy--the discussions, deliberations, decisions, and action of government agencies--shall be conducted as openly as possible." Haw. Rev. Stat. § 92F-2 (Supp. 1990).

However, in previous OIP opinion letters, based upon Exemption 5 of FOIA and for other compelling public policy reasons, we have extended the UIPA's frustration exception to certain "intra-agency" and "inter-agency" memoranda protected by the common law "deliberative process privilege." See, e.g., OIP Op. Ltr. Nos. 90-11 (Feb. 26, 1990), 90-21 (June 20, 1990). The United States Supreme Court has described the fundamental purpose of this executive privilege as follows:

> Manifestly, the ultimate purpose of this long recognized privilege is to prevent injury to the quality of agency decisions. The quality of a particular agency decision will clearly be affected by the communications received by the decision maker on the subject of the decision prior to the time the decision is made.

NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 151 (1975).

In short, this deliberative process privilege of FOIA's Exemption 5 rests upon a belief that "were agencies forced to operate in a fishbowl, the frank exchange of ideas and opinions would cease and the quality of administrative decisions would consequently suffer." See Dudman Communications Corp. v.

Department of the Air Force, 815 F.2d 1565, 1567 (D.C. Cir. 1987); Costal States Gas Corp. v. Department of Energy, 617 F.2d 854, 866 (D.C. Cir. 1980).

As we have previously explained in several OIP advisory opinions, there are two fundamental requirements, both of which must be met, before a government record is protected by the "deliberative process privilege." First, the communication must be predecisional, i.e., "antecedent to the adoption of an agency policy." Jordan v. Department of Justice, 591 F.2d 753, 774 (D.C. Cir. 1978). Second, the communication must be deliberative, i.e., "a direct part of the deliberative process in that it makes recommendations or expresses opinions on legal or policy matters." Vaughn v. Rosen, 523 F.2d 1136, 1143-44 (D.C. Cir. 1975).

Further, as emphasized in a recent decision of the U.S. Court of Appeals for the District of Columbia, the deliberative process privilege of FOIA's Exemption 5 exists to ensure the quality of agency decisions, not to protect the decisionmaking of non-government agencies:

> Ryan (and Formaldehyde), then, stand for the proposition that Exemption 5 permits an agency to protect the confidentiality of communications from outside the agency so long as those communications are part and parcel of the agency's deliberative process. As such, they remain intra-agency documents. None of our cases have extended that notion, however, to the protection of deliberations of a non-agency either as an interpretation of `intra-agency' or `inter-agency.'

Dow Jones & Company, Inc. v. Department of Justice, 917 F.2d 571, 575 (D.C. Cir. 1990) (emphasis added).

Lastly, consistent with the policy underlying this privilege, it does not apply to factual information within deliberative government records "in a form that is severable without compromising the private remainder of the documents." Environmental Protection Agency v. Mink, 410 U.S. 73, 91 (1973). We now turn to an examination of the various Law School accreditation documents, and whether each is protected by the deliberative process privilege that we have recognized under section 92F-13(3), Hawaii Revised Statutes.

A. 1989 "Self-Study" Prepared by Law School Personnel

In OIP Opinion Letter No. 90-11 (Feb. 26, 1990), we concluded that portions of institutional "self-study" reports prepared by University personnel as part of a "program review" were protected by the deliberative process privilege of section 92F-13(3), Hawaii Revised Statutes. The self-study reports under review in OIP Opinion Letter No. 90-11 contained personal and frank assessments by agency personnel concerning academic programs and expressed candid recommendations for policy and curriculum changes. Agency self-evaluations have been traditionally accorded protection under the common law deliberative process privilege. See Ashley v. Department of Labor, 589 F. Supp. 901 (D.D.C. 1983); OIP Op. Ltr. No. 90-11 at 7-9, and state court decisions cited therein.

We believe, as we did in OIP Opinion Letter No. 90-11, that portions of the Law School's "self-study" are protected from disclosure under section 92F-13(3), Hawaii Revised Statutes, in that it contains predecisional and deliberative material.[3] However, as with the self-study reports under consideration in our earlier opinion, the Law School's 1989 self-study contains abundant information which is purely factual, that in our opinion is not subject to the deliberative process privilege.

By way of illustration and not limitation, section I of the Law School's 1989 self-study contains purely factual information regarding the faculty. Likewise, a significant

[3]Our conclusion is supported by a decision of the only authority, that we could find, that has considered public access to academic self-studies prepared in connection with an accreditation review. In Open Records Decision No. 419 (June 21, 1984), the Texas Attorney General considered whether a self-study report prepared by Texas A & I University, for an accreditation review by the Southern Association of Colleges and Schools, was subject to public inspection under the Texas Open Records Act. The opinion concluded those portions of the report which contained projections, recommendations, or opinions concerning policy matters were exempt from disclosure, and also concluded that purely factual and objective data must be disclosed.

portion of section II of the self-study contains factual information concerning the Law School's curriculum. Similarly, the self-study contains abundant factual information concerning the School's law library and the Pacific-Asian Legal Studies Program. In our opinion, this factual information is reasonably segregable from the deliberative material, and must be disclosed. Should the Law School need guidance in applying the principles set forth in this opinion to specific portions of the self-study, the OIP will be in a position to be of assistance at that time.

B. 1989 Joint Site Evaluation Report

First, the fact that the joint site evaluation report may reflect positively or negatively on Law School operations is of no legal relevance in determining whether this report is subject to the deliberative process privilege of section 92F-13(3), Hawaii Revised Statutes. This cannot be the litmus test for determining whether information is confidential under a freedom of information law designed and intended to promote governmental accountability by subjecting the operations of agencies to the light of public scrutiny.

However, from our review of the 1989 joint site evaluation report prepared by the ABA and AALS inspection teams, there is no genuine issue that several portions of this document are both "predecisional" and "deliberative" in character. The report is predecisional in that it is an integral part of the ABA's and AALS' decisionmaking concerning whether to continue the Law School's fully accredited status. The report itself does not determine a school's accredited status. Further, portions of the evaluation report are deliberative in character in that they set forth the subjective observations, recommendations, and opinions of the joint inspection team.

Significantly, however, the evaluation report is prepared first and foremost to facilitate decisionmaking by the ABA and the AALS, entities that are not agencies as defined by section 92F-3, Hawaii Revised Statutes. Nor has there been any factual showing by the Law School that disclosure of the 1989 joint site evaluation report would impair the operation of the Law School, or the decisionmaking of school administrators.

In our opinion, shielding the 1989 joint site evaluation report on the Law School from public inspection would not further the public policy which underlies the "deliberative process privilege." As stated in the Dow Jones & Company case

cited above, the purpose of this privilege is to protect the quality of agency decisionmaking, not the quality of decisionmaking by non-government entities, including the ABA and AALS.

While the material contained in the ABA and AALS site evaluation reports undoubtedly may have some ancillary value to the decisionmaking process of Law School administrators, this value is merely incidental to the report's intended purpose to facilitate an accreditation determination by the AALS and ABA.

Additionally, we note that the University of Hawaii has publicly disclosed the site evaluation report prepared by the visiting accreditation team from another accrediting body, the Western Association of Schools and Colleges ("WASC"), in response to a UIPA request by Ka Leo O Hawaii. See Exhibits "A" and "B." We also understand that the site evaluation report concerning the University of Hawaii School of Architecture prepared by the inspection team from the National Architecture Accrediting Board is available for public inspection and copying at University libraries. We find it difficult to believe that disclosure of the joint site evaluation report concerning the Law School would be "harmful" to, or affect the integrity of the accreditation process, when the site evaluation report of the body which accredits all the educational activities of the UH, the WASC, has been publicly distributed.

Because the OIP has not been presented with anything but conclusory allegations that disclosure of the site evaluation report would be "harmful" to the Law School's evaluation process, we are constrained to conclude that the reports are not part of the deliberative process of the Law School.

In preparing this advisory opinion, the OIP contacted the ABA's Consultant on two occasions in an attempt to confirm whether disclosure of the site evaluation report in violation of ABA Rule 36(a) would jeopardize or affect the Law School's fully approved status. See Exhibits "C" and "D." The ABA, in its reply to the OIP's correspondence, argued in the most conclusory terms that the report must remain confidential to avoid the frustration of the accreditation process. See Exhibit "E". The ABA, however, has made no indication or showing that disclosure of the report would jeopardize or adversely affect the Law School's accredited status.

In the absence of such a showing, and in absence of a credible showing that the report is prepared to facilitate decisionmaking by an "agency" as that term is defined by section 92F-3, Hawaii Revised Statutes, in other than an ancillary fashion, we must conclude that unlike the Law School's "self-study," the joint site evaluation report prepared by the ABA and AALS is not protected under the UIPA's "frustration" exception for deliberative and predecisional intra-agency and inter-agency memoranda which, if disclosed, would frustrate a legitimate government function.

However, pages 17-23 of the joint site evaluation report evaluate the quality of the Law School's 1989 self-study, and both quotes and paraphrases portions of the self-study that are covered by the UIPA's deliberative process privilege. For the reasons set forth earlier in this opinion, we conclude that the Law School may delete, or segregate those portions of pages 17-23 of the joint site evaluation report that would disclose the candid evaluations, opinions, or recommendations of the self-study authors. Those portions of pages 17-23 of the joint site evaluation report which do not reveal the candid evaluations, opinions, and recommendations of Law School personnel are not protected from disclosure under the UIPA, for the reasons set forth above.

C. ABA "Action letter" and AALS "Resolution"

By letters dated November 21, 1989 and November 30, 1989, the ABA and AALS reported the official actions taken by the Accreditation Committees of the ABA and AALS, respectively, as a result of the 1989 regular sabbatical accreditation inspection of the Law School. Based upon our review of each of these letters, it appears to us that they constitute the ABA "action letter" and AALS "resolution," respectively. ABA Rule 1(a) defines the term "action letter" to mean "a letter transmitted by the Consultant to the president and dean of a law school reporting Committee or Council Action." ABA Rule 36(b) and AALS Rule 5.6(c) each permit the Law School to publish or disclose these documents, which communicate and report the official actions and decisions of each accrediting body regarding the Law School.

Neither the ABA, the AALS, or the Law School have provided any facts showing how disclosure of the official actions of the Law School's accrediting institutions would result in the frustration of a legitimate government function. Nor do we

believe that these government records are protected from disclosure by any other exception to access set forth at section 92F-13, Hawaii Revised Statutes.

On the contrary, it is our opinion that disclosure of these government records, which report the official actions of the Law School's accrediting bodies, would promote the legislative purposes underlying the UIPA. In adopting the UIPA, the Legislature declared, among other things:

> In a democracy, the people are vested with the ultimate decision making power. Government agencies exist to aid the people in the formation and conduct of public policy. Opening up the government processes to public scrutiny and participation is the only viable and reasonable method of protecting the public's interest. Therefore, the legislature declares that it is the policy of this State that the formation and conduct of public policy--the discussions, deliberations, decisions, and action of government agencies--shall be conducted as openly as possible.

Haw. Rev. Stat. . 92F-2 (Supp. 1990).

The disclosure of the official actions taken by the Law School's accrediting organizations would definitely shed light upon the operations, management, and condition of a public institution whose faculty, programs, and property are paid for by significant public expenditures. The disclosure of information concerning the extent to which the ABA has determined that the School's curriculum or physical plant satisfy or do not satisfy the minimum standards necessary for its graduates to be admitted to practice before the Courts of the State of Hawaii is a matter affected with the greatest of public interest. Because no UIPA statutory exception to public access applies to the "action letter" and "resolution," they must be made available for public inspection and copying, as provided by section 92F-11(a) and (b), Hawaii Revised Statutes.

IV. CLEARLY UNWARRANTED INVASION OF PERSONAL PRIVACY

Portions of the self-study and the joint site evaluation reports contain information identifiable to certain faculty members and staff. The UIPA does not require agencies to disclose "[g]overnment records which, if disclosed, would

constitute a clearly unwarranted invasion of personal privacy." Haw. Rev. Stat. . 92F-13(1) (Supp. 1990).

For example, that portion of section I of the self-study, entitled "Attachments," contains the resumes of all faculty members. Some of these resumes contain the home addresses, home telephone numbers, birthdates, marital, and familial statuses of certain faculty members. Similarly, section III of the self-study, and sections IV, V, and VI of the site evaluation report, set forth the exact salaries of certain Law School personnel, including, but not limited to, the Dean and law library staff.

In our opinion, the disclosure of this information would constitute a clearly unwarranted invasion of personal privacy under section 92F-13(1), Hawaii Revised Statutes.[4] See Haw. Rev. Stat. . 92F-12(a)(14) (Supp. 1990); OIP Op. Ltr. Nos. 89-16 (Dec. 27, 1989) (home addresses), 90-10 (Feb. 26, 1990) (home telephone numbers and birthdates); Simpson v. Vance, 648 F.2d 10, 17 (D.C. Cir. 1980) (marital status and name of spouse); IBEW, Local 3 v. NLRB, 845 F.2d 1177 (2d Cir. 1988) (marital status). Accordingly, such information should also be segregated from the self-study or site evaluation reports before the public is permitted to inspect or copy the same.

CONCLUSION

For the reasons set forth above, we conclude that: 1) those portions of the Law School's self-study which set forth the candid evaluations and assessments of its authors are protected from disclosure under the UIPA's exception for government records which must remain confidential to avoid the frustration of the legitimate government function of agency decisionmaking; 2) those portions of the joint site evaluation

[4]Section 92F-12(a)(14), Hawaii Revised Statutes, provides that only the salary range of agency employees who are subject to chapter 304, Hawaii Revised Statutes, must be disclosed. Chapter 304, Hawaii Revised Statutes, is entitled "University of Hawaii." However, to the extent that University of Hawaii employees are "contract hires" or "exempt" employees, their exact salaries must be publicly accessible. See Haw. Rev. Stat. .. 92F-12(a)(14) and 92F-12(a)(10) (Supp. 1990).

report which reveal the candid evaluations set forth in the Law School's self-study are similarly protected; 3) those portions of the self-study and joint site evaluation which reveal the exact salaries of certain Law School personnel, or their home addresses, telephone numbers, birthdates, and marital statuses are protected from disclosure by the UIPA's personal privacy exception; and 4) the ABA's "action letter" dated November 21, 1989 and the AALS "resolution or minute" dated November 30, 1989, which set forth the decisions of the Law School's accrediting organizations, must be made available for public inspection and copying under the UIPA.

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